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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/755,381	01/05/2001	Evelyn Duesterwald	10990963-1	5203

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EXAMINER

YIGDALL, MICHAEL J

ART UNIT	PAPER NUMBER
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2122

DATE MAILED: 10/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/755,381

Applicant(s)

DUESTERWALD ET AL.

Examiner

Michael J. Yigdall

Art Unit

2122

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 July 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1-3, 7-13 and 17-20.

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

Continuation of 5:


The examiner disagrees with Applicant's characterization of the manner in which Click is cited in the previous Office action (see Applicant's remarks, page 7, third and fourth paragraphs). Click clearly teaches a register mask having a plurality of bit positions (see column 7, lines 50-53). The register mask describes the location of a value associated with a calling convention (see column 8, lines 12-14), or in other words, provides information regarding a calling convention. Click further discloses that the calling convention, as known in the art, is the convention by which subroutine or procedure calls are made, specifically the convention by which registers and stack slots are used for such subroutine or procedure calls (see column 1, line 54 to column 2, line 7). The disclosure of Click, therefore, teaches register masks that provide information specifying the manner in which registers are used for procedure calls.

In response to Applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning (see Applicant's remarks, page 8, second paragraph), it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the Applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In this case (see Applicant's remarks, page 8, fourth paragraph), Srivastava discloses liveliness information that correlates registers with the instructions that reference the registers (see column 10, lines 1-46). The information is inter-procedural (see column 10, lines 9-14), which is to say that the information correlates registers and instructions across procedure calls (see FIG. 6). Likewise, as presented above, the register masks of Click provide information specifying the manner in which registers are used for procedure calls. Therefore, supplementing the information of Srivastava with the register masks taught by Click would provide additional information with which to correlate registers and instructions across procedure calls. Specifically, the register masks would provide additional information regarding the calling convention of the procedure calls, or in other words, the convention by which the registers are used by the procedure call instructions. It would have been obvious to one of ordinary skill in the art at the time the invention was made to supplement the information of Srivastava with the register masks taught by Click in order to provide such information.

Moreover, Applicant acknowledges that Srivastava teaches a method for removing dead code and that Click teaches a system that uses register masks to determine a live range of registers (see Applicant's remarks, page 8, third paragraph). In fact, to remove dead code, Srivastava further discloses determining the liveliness of registers (see column 9, lines 15-16). Because the register masks of Click are an additional means by which to determine the live range or the liveliness of registers, one of ordinary skill in the art would have been motivated to employ such means in the method taught by Srivastava.

MY


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